

COPY

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA**

FILED
THOMAS D. HALL
JAN 24 2002

CLERK, SUPREME COURT
BY _____

**INQUIRY CONCERNING A
JUDGE GREGORY P. HOLDER
NO. 01-303**

**Florida Supreme Court
Case Number: SC02-33**

**VERIFIED MOTION TO DISQUALIFY FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION HEARING PANEL**

COMES NOW, JUDGE GREGORY P. HOLDER, the Respondent in this Cause,
having been duly sworn, and files this, his Verified Motion to Disqualify Florida Judicial
Qualifications Commission (hereinafter "FJQC") Hearing Panel, pursuant to Rule 25 of the
Florida Judicial Qualification Commission Rules (hereinafter referred to as "FJQCR"), Rule 2.160
of the Florida Rules of Judicial Administration, and the provisions of Canon 3(E) of the Code of
Judicial Conduct. This Verified Motion respectfully applies to each and every member of the
FJQC who is either currently assigned to this Hearing Panel or who currently serves in any
capacity as a member of the FJQC.

1. I have been charged by the Investigative Panel of the FJQC in a certain Notice of
Formal Charges. The Notice of Formal Charges was received by my office on January 9, 2002,
by regular U.S. Mail in a plain white envelope. Thus, as of the filing of this Verified Motion, I
have never been properly and legally served in accordance with the mandatory requirements of
FJQCR 6(h) which states as follows:

"(h) Service of the notice shall be made personally or by registered or certified mail
addressed to the judge's chambers or, if returned undelivered, at the judge's last
known residence."

Despite the lack of proper service, I submit myself to the jurisdiction of the FJQC Hearing Panel for the purposes of submitting this Verified Motion.

2. On October 22, 2001, the FJQC Investigative Panel properly served upon me, via Certified U.S. Mail No. 282 586 817, its Notice of Investigation (attached hereto as Exhibit "A"). Within this Notice, the FJQC Investigative Panel alleged as follows:

"This answer was false or misleading because on two previous occasions you have personally met with the Chairman of this Commission to be admonished concerning your conduct as a result of complaints filed against you by this Commission." [emphasis added].

Thus, according to the FJQC Notice of Investigation, the two previous private meetings with the Chairmen of the FJQC were pursuant to complaints filed by members of the FJQC.

3. The Notice of Investigation, signed on behalf of the FJQC, by The Honorable James R. Wolf, Chairman, First District Court of Appeal, 301 M.L. King Jr. Blvd., Tallahassee, FL 32399-1850, (850) 922-6998, referred the allegations contained therein to the Investigative Panel of the FJQC which met on Friday, November 9, 2001, at Orlando, Florida, to conduct what is commonly referred to as a "6(b) hearing".

4. At the outset of the 6(b) FJQC Investigative Panel hearing, Chairman/Judge James R. Wolf recognized the absolute conflict of interest and unusual nature of this case when, at the very beginning of the Investigative Panel hearing on November 9, 2001, before the entire membership of the FJQC Investigative Panel, he stated as follows:

"THE CHAIRMAN: Before we proceed, it's a little unusual because what's involved in this charge is that both Mr. MacDonald and I could be potential witnesses in this case.

So I'm going to give you the opportunity, if you want us not to take part or be in the room, there'll be no hard feelings, nothing thought of, but we will leave at your request if you don't want us (inaudible) –

JUDGE HOLDER: I waive any apparent or implicit conflict of interest with respect to your participation and that of Mr. MacDonald in these proceedings. I welcome your attendance and participation in these proceedings today.”

5. My waiver of the conflict of interest with respect to the participation of Judge Wolf and Mr. MacDonald in my Investigative Panel hearing on November 9, 2001, did not constitute a complete waiver of this conflict as to this charge, the actions of the Investigative Panel or the FJQC hearing on this matter. Moreover, I specifically do not waive this conflict of interest and request that both FJQC Chairman Judge James R. Wolf and FJQC General Counsel, Mr. Thomas C. MacDonald, recuse themselves from any further participation in this case.

6. Canon 3E(1)(d) (iv) states in pertinent part that: “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where . . . the judge . . . is likely to be a material witness to the proceeding.” [emphasis added].

7. The Notice of Formal Charges voted on and forwarded for disposition by the FJQC Investigative Panel, submits the following charge for consideration and adjudication by this Hearing Panel:

“1. In or about March, 1998, you were requested to come to the chambers of your Chief Judge, the Honorable F. Dennis Alvarez for the purpose of meeting with Judge Alvarez, along with JQC General Counsel Tom McDonald [sic] and JQC Chairman Gil Goshorn. In the course of that meeting, you were admonished by Judge Goshorn and Mr. McDonald [sic] for remarks you made to a local newspaper concerning a recent decision of the Second District Court of Appeal, which had reversed your ruling in a parental termination of rights hearing. You were cautioned against the making of such intemperate remarks in the future.

2. On several occasions, both before and after the foregoing meeting with Mr. McDonald [sic] and Judge Goshorn, you had been cautioned by your Chief Judge Alvarez about the impropriety of certain public remarks you made concerning the Thirteenth Circuit Judiciary. On one or more of these occasions, Judge Alvarez advised you that complaints had been made to him by others concerning your inappropriate public remarks.

3. On or about February 9, 2001 date, you were requested to, and did in fact meet with JQC Chairman Judge James Wolf in a conference room at the Tampa Airport. At that meeting, Judge Wolf specifically advised you of a complaint against you arising out of an incident during a hearing in your chambers in which you became upset at one or more of the attorneys and threw handcuffs on your desk in a manner regarded as threatening and intimidating by the attorneys and at least one client present. Judge Wolf communicated to you that such conduct is viewed as inappropriate by the JQC. You were cautioned against engaging in such conduct in the future.

4. On or about February 13, 2001, the Honorable James R. Wolf, Chair of the Judicial Qualifications Commission, wrote you a letter stating as follows:

Dear Judge Holder:

This is to advise you that the Investigative Panel of the Judicial Qualifications Commission, at its February 9, 2001 meeting, determined that following my conference with you on that date, no further action would be taken in the complaint filed against you in the above-referenced matter. [Emphasis added]

This correspondence was sent to you by regular U.S. mail, addressed to the Honorable Gregory P. Holder, 370 Hillsborough County Courthouse, 419 Pierce Street, Tampa, Florida 33602-4022.

5. Notwithstanding the foregoing incidents, on or about May 30, 2001, you submitted an application for the position of United States District Judge for the Middle District of Florida in which you answered "no" to the following question:

Disciplinary matters. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give particulars.

This answer was false or misleading in view of your two previous meetings with chairmen of the JQC to be admonished concerning your conduct as a result of the complaints made against you to, or by, the JQC. The answer was also false or misleading in view of complaints made against you to the chief judge of your circuit, of which you had been aware."

8. In this case, as is obvious from the foregoing, at any hearing before the Hearing Panel, the FJQC will be functioning as accuser/complainant, prosecution witness, judge and jury. Clearly, by necessity, past and present members and officials of the FJQC will be called as fact witnesses against me in a hearing or trial held by the FJQC, which could potentially lead to an adverse finding and recommended disciplinary action.

9. Thus, it is intuitively obvious to even the most casual observer that the primary FJQC witnesses against me shall be Judge Gil Goshorn, former Chairman of the FJQC; Judge James R. Wolf, current Chairman of the FJQC, who also served as Chairman of the FJQC Investigative Panel in my case; and, Thomas C. MacDonald, Esq., former member of the FJQC and now General Counsel to the FJQC.

10. Despite the bifurcation of the FJQC set forth within the FJQCR and the Constitution of the State of Florida, the entire membership of the FJQC meets together periodically to "consider and decide matters relating to budget and other business of the Commission not specifically assigned to its panels." FJQCR 4. Therefore, the members of the FJQC Investigative Panel are professional colleagues of the FJQC Hearing Panel. These relationships and the very unique facts of this case set forth above mandate the granting of the relief requested within this Verified Motion.

11. FJQC Hearing Panel member, Mr. Martin L. Garcia, a former partner in, and presently affiliated with the Tampa law firm of Hill, Ward & Henderson, P.A., which practices

extensively before me in the General Civil Division of the Thirteenth Judicial Circuit. Moreover, Mr. Garcia is a personal friend of both myself and former Judge F. Dennis Alvarez, who is listed in the Charge and will undoubtedly serve as a witness in this trial.

12. Based upon the foregoing, I fear that I cannot possibly receive a fair hearing before the Hearing Panel on the charge against me because of the prejudice of the entire membership of said Commission including, but not limited to, the currently assigned Hearing Panel.

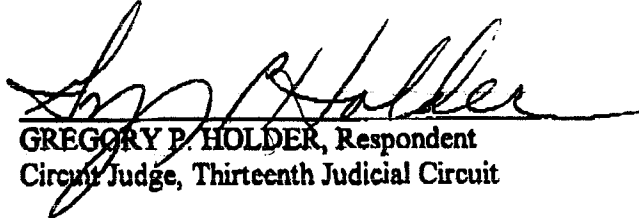
13. Based upon the express mandate of Canon 3E(1) of the Code of Judicial Conduct, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" This absolute prohibition requires disqualification of the judicial membership of the FJQC and would arguably apply to the non-judicial membership who function in this judicial capacity.

14. FJQCR 25 provides the procedure for the ad hoc appointment of persons who may temporarily serve in the absence of disqualified members.

15. I have attached the affidavits of Ms. Patricia Fields Anderson and the Honorable Jerry Hill, which support in substance this Verified Motion. Both Ms. Anderson and Mr. Hill are reputable citizens of the State of Florida, not kin to me or my attorney, as required by FJQCR 25(a).

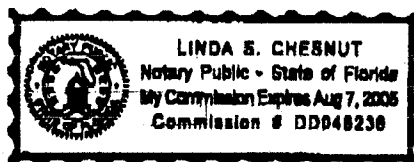
16. The granting of this Verified Motion is consistent with the interests of fundamental fairness and due process guaranteed by the Constitution of the State of Florida and the Florida


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Judicial Qualifications Commission Rules. I respectfully submit that the granting of this relief is absolutely necessary not only to avoid the appearance of impropriety, but also to ensure public trust and confidence in the FJQC proceedings.


GREGORY P. HOLDER, Respondent
Circuit Judge, Thirteenth Judicial Circuit

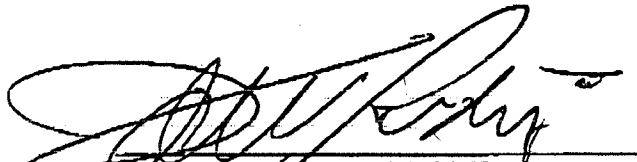
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing was sworn to and acknowledged before me this 24th day of January, 2002, by Judge Gregory P. Holder, who is personally known to me.



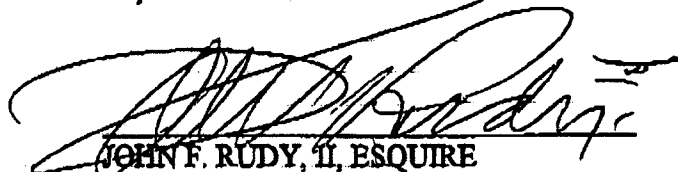

Linda S. Chesnut
Notary Public
My Commission Expires:

I HEREBY CERTIFY that the foregoing Verified Motion to Disqualify Florida Judicial Qualifications Commission Hearing Panel, as well as my client's statements therein, are made in good faith.


JOHN F. RUDY, II, ESQUIRE
Bush, Ross, Gardner, Warren & Rudy, P.A.
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220 S. Franklin Street
Tampa, FL 33601-3913
(813) 224-9255
(813) 223-9620 (facsimile)
Florida Bar No. 140209
Attorney for Judge Gregory P. Holder

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the originals of the Verified Motion to Disqualify Florida Judicial Qualifications Commission Hearing Panel, Affidavit of Patricia Fields Anderson and Affidavit of the Honorable Jerry Hill, together with diskettes (3 ½") containing copies of these documents in WordPerfect format, have been furnished by Federal Express to the Clerk of Court, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, FL 32399-1927; and that true and correct copies of the foregoing (without diskettes) have been furnished by U.S. mail to: Honorable James R. Jorgenson, Chairman, Florida Judicial Qualification Hearing Panel, Third District Court of Appeal, 2001 S.W. 117th Ave., Miami, FL 33175-1718; Dale R. Sanders, Esquire, Vice Chairman, Florida Judicial Qualifications Commission Hearing Panel, 1110 Thomasville Rd., Tallahassee, FL 32303; John D. Jopling, Esquire, Special Counsel to the Judicial Qualifications Commission, 203 N.E. First St., P.O. Box 850, Gainesville, FL 32602; John R. Beranek, Esquire, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, FL 32302-0391; and Brooke S. Kennerly, Judicial Qualifications Commission Executive Director, 1110 Thomasville Rd., Tallahassee, FL 32303, this 24th day of January, 2002.



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250389.2

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

Inquiry Concerning A
Judge: Gregory P. Holder
No.: 01-303

Florida Supreme Court
Case No.: SC02-33

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STATE OF FLORIDA
COUNTY OF PINELLAS

AFFIDAVIT

BEFORE ME the undersigned authority personally appeared PATRICIA
FIELDS ANDERSON who being first duly sworn deposes and says:

1. My name is Patricia Fields Anderson, I am over the age of 18 years, and I make this statement on personal information.
2. I am not kin to the Hon. Gregory P. Holder nor Judge Holder's attorney.
3. I have been licensed to practice law continuously in Florida since 1982 and have been engaged in the private practice of law during that time.
4. My principal areas of practice have been media defense and civil rights, with an emphasis on First Amendment and Due Process issues. About ten years ago, I was retained as special counsel by the Judicial Qualifications Commission ("JQC") to prosecute Hon. Daniel Perry of the Ninth Judicial

Circuit and, thus, am generally familiar with the Commission's procedures.

In addition, in connection with my practice, I have had many occasions to consider issues of confidentiality, privacy and the like.


5. I have reviewed materials relating to charges of misconduct against Hon. Gregory P. Holder of the Thirteenth Judicial Circuit, filed in the Florida Supreme Court by the Judicial Qualifications Commission. I am aware that the Commission's investigations are confidential, by virtue of Art V, § 12(a)(4), Florida Constitution, but upon the filing of formal charges against a judge, all "further proceedings" before the JQC are public.
6. It appears that Judge Holder has been charged with failing to disclose on a federal judicial applications matters that are confidential, specifically two counseling sessions with members of the Commission, individually but apparently at the behest of the Commission, and one counseling session with Hon. Dennis F. Alvarez, the former Chief Judge of the Thirteenth Judicial Circuit. None of these counseling sessions resulted in formal charges against nor in any discipline of Judge Holder. Judge Holder could just as easily have been charged with violation of the confidentiality that shrouds JQC investigations had he revealed these three counseling sessions on the federal application.

7. Thus, in my opinion, Judge Holder has been placed in an untenable "Catch 22" position: either reveal the existence of the counseling sessions (and be charged with violation of the constitutional confidentiality of JQC investigations) or respect the confidentiality of the sessions, as instructed at the time (and be charged with lying on the federal application). I know of at least one judge who, when faced with this dilemma, sought advice from the Commission and was advised to answer that no formal charges had ever been filed.
8. It is my further opinion that these charges highlight a flaw in the Commission's practice of using informal counseling sessions with judges, and that is a due process flaw. The nature of the sessions is so informal that no due process protections are in place to protect the judge, including the right to counsel, and it seems a bit disingenuous for the Commission to charge Judge Holder for failing to reveal to another agency as a "complaint" an informal counseling session designed to forestall the formal complaint procedure.
9. Aside from these substantive issues, there is the issue that is most likely to provoke public suspicions about the Commission's case against Judge Holder: because of the nature of the charges, inevitably members of the Commission and Commission support staff members will be witnesses

against Judge Holder in this case. It is my opinion that the Commission cannot – and cannot be expected to – fairly judge the merits of the case when its own members or staffers are the witnesses against the judge. No person can be a judge of his own conduct, a concept discussed in *Lovejoy v. Grubbs*, 432 So.2d 678, 681 (Fla. 5th DCA 1983) (“The common law principle that one cannot serve two masters is still viable in Florida, and is applicable to all those individuals holding positions of public trust”).

10. It is my opinion and belief that public confidence in the judiciary will be lessened and an appearance of impropriety will be created if the Commission does not disqualify itself in Judge Holder’s case.

FURTHER AFFIANT SAYETH NAUGHT.

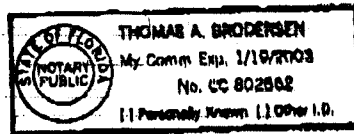


Patricia Fields Anderson, Affiant

Sworn to and subscribed before me this 17th day of January, 2002, by
PATRICIA FIELDS ANDERSON who is personally known to me.


Notary Public

My Commission expires:



AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF POLK)

BEFORE ME, the undersigned authority, personally appeared JERRY HILL who being first duly sworn deposes and says:

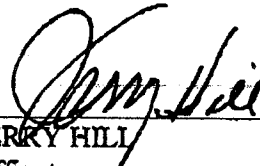
I, Jerry Hill, am over the age of eighteen years and a resident of Polk County, Florida. I have been a member of the Florida Bar since 1973 and have served as the State Attorney for the Tenth Judicial Circuit of Florida since January 1985. During my tenure as State Attorney I have had the opportunity to lead several state attorney and grand jury investigations into the misconduct of public officials, including members of the judiciary. I also have served as a member and chairman of a Florida Bar Grievance Committee for the Tenth Judicial Circuit. Finally, I have had the occasion as State Attorney to examine cases and ask the governor to appoint another state attorney to prosecute those cases so as to avoid the appearance of conflict or impropriety.

I am not kin to the Honorable Gregory P. Holder, and I am not kin to Judge Holder's attorney, John F. Rudy, II.

I have reviewed the Verified Motion to Disqualify Florida Judicial Qualifications Commission Hearing Panel filed by the Honorable Gregory P. Holder. I hereby adopt the factual allegations contained therein and incorporate them by reference into this affidavit.

It is my opinion based on my experience as outlined above and on the facts set forth in Judge Holder's motion which have been incorporated into this affidavit that he cannot receive a fair hearing before the Florida Judicial Qualifications Commission because of the involvement of members,

former members and employees of the Commission as witnesses against him. Further it is my opinion that the failure of the present Commission to disqualify itself will create an appearance of impropriety on the part of the Commission.


JERRY HILL
Affiant

Sworn to and subscribed before me this 18th day of January, 2002, by JERRY HILL who is personally known to me.


NOTARY PUBLIC

"Official Notary Seal"
LORENA PATRICIA DIAZ
Notary Public, State of Florida
My Commission Expires Oct. 6, 2002
Commission No. CC 781284